



THE COMMONWEALTH OF MASSACHUSETTS  
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August 29, 2007

**VIA ELECTRONIC FILING**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street S.W.  
Washington, DC 20423-0001

Re: New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway –  
Petition for an Exemption from 49 U.S.C. § 10901 to Acquire, Construct and  
Operate as a Rail Carrier on Tracks and Land in Wilmington and Woburn, MA  
Finance Docket No. 34797

Dear Secretary Williams:

I attach for filing the Reply of the Commonwealth of Massachusetts to Petitioner's  
Submission of Supplemental Information Requested by the Board.

Please call me at x2418 if you have any questions on the attached document. Thank you  
for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Siu Tip Lam".

Siu Tip Lam

Assistant Attorney General  
Environmental Protection Division

cc: Service List in STB Finance Docket No. 34797 (by first-class mail)

BEFORE THE SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 34797

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NEW ENGLAND TRANSRAIL, LLC, d/b/a WILMINGTON & WOBURN TERMINAL RAILWAY – PETITION FOR AN EXEMPTION FROM 49 U.S.C. § 10901 TO ACQUIRE, CONSTRUCT AND OPERATE AS A RAIL CARRIER ON TRACKS AND LAND IN WILMINGTON AND WOBURN, MASSACHUSETTS

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**REPLY OF THE COMMONWEALTH OF MASSACHUSETTS  
TO PETITIONER'S SUBMISSION OF SUPPLEMENTAL INFORMATION  
REQUESTED BY THE BOARD**

MASSACHUSETTS DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

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Dated: August 29, 2007

BEFORE THE SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 34797

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NEW ENGLAND TRANSRAIL, LLC, d/b/a WILMINGTON & WOBURN TERMINAL RAILWAY – PETITION FOR AN EXEMPTION FROM 49 U.S.C. § 10901 TO ACQUIRE, CONSTRUCT AND OPERATE AS A RAIL CARRIER ON TRACKS AND LAND IN WILMINGTON AND WOBURN, MASSACHUSETTS

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**REPLY OF THE COMMONWEALTH OF MASSACHUSETTS  
TO PETITIONER’S SUBMISSION OF SUPPLEMENTAL INFORMATION  
REQUESTED BY THE BOARD**

Pursuant to the Board’s decision served on July 10, 2007 (“Decision”), the Commonwealth of Massachusetts through the Attorney General’s Office (“MassAGO”) and the Massachusetts Department of Environmental Protection (“MassDEP”) submits this Reply in response to the Supplemental Information submitted by New England Transrail, Inc., d/b/a Wilmington & Woburn Terminal Railway (“NET”) on or about August 9, 2007.

In its Decision, the Board ruled that loading and unloading and temporary storage of municipal solid waste (“MSW”) and construction and demolition debris (“C&D”) are within the Board’s jurisdiction. (Decision at 14.) The Board also decided that the baling and wrapping of MSW and “extracting refrigerators, so as to avoid a legal impediment to the delivery of a shipment at a receiving landfill, would be part of rail transportation and covered by Federal preemption.”<sup>1</sup> (Id.) In the Decision, the Board ordered NET to submit evidence to demonstrate why it should be granted the authority to construct, acquire and operate the proposed rail lines

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<sup>1</sup> On July 30, 2007, Massachusetts filed with the Board a petition for reconsideration or clarification of the Board’s Decision concerning the extraction of refrigerators or other items that may create a “legal impediment” to the delivery of a shipment at a receiving landfill. That petition is pending before the Board.

and activities that the Board has found to be within the Board's jurisdiction. (Id. at 18.) The Board permitted interested parties to reply to any such submission by August 29, 2007. (Id.)

In its submissions, NET argues that its proposal is in the public interest. However, the solid waste processing activities, which the Board found to be part of rail transportation (i.e., the baling and wrapping of MSW and the sorting and extraction of refrigerators or other items that are not acceptable at the receiving landfill), are not in the public interest precisely because those activities would not be subject to state site assignment and permitting regulations. The site assignment process ensures that a location is suitable for use as a site for a solid waste facility. G.L. c 111, § 150½, and 310 Code of Massachusetts Regulations ("CMR") 16.00 et seq. The permitting process ensures that solid waste facilities are designed, constructed, and operated to prevent pollution of land, air and water and to prevent nuisance conditions. G.L. c. 111, § 150, and 310 CMR 19.000 et seq. These comprehensive requirements provide an essential layer of protection for the affected communities. Without them, the public health, welfare and the environment remain at risk. Therefore, the solid waste processing activities not subject to these regulations are not in the public interest.

Even if the Board imposes conditions allowing MassDEP "to carry out inspections and to monitor carrier activities to ensure compliance with Board-imposed conditions," (see Decision at 17), the conditions would not be a substitute for the comprehensive site assignment and permitting regulations in ensuring that the site is suitable for use as a solid waste facility. Moreover, enforcement of any Board-imposed conditions would suffer from the lack of effective tools to ensure compliance and protection of public health and the environment. First, it is unclear what authority the MassDEP would have to enforce conditions imposed by the Board and what sanctions would be available to the MassDEP to ensure compliance. Second, it is also

unclear whether the Board would have the resources to respond to and address enforcement issues as they arise, or whether the Board would want to arbitrate disputes over any violations. The lack of effective enforcement tools would result in a regulatory loophole that cannot ensure the adequate protection of the affected communities and the environment.

Experience has well demonstrated, both in Massachusetts and across the country, that solid waste facilities that are not adequately regulated on a continuing and long term basis are prone to create severe public health, safety, and environmental problems for the area in which they are located. See Statement of Position of MassAGO, April 16, 2006, at 8-9, and attached Ex. A; Verified Statement of J. Castner in Opp. to NET's Petition for Exemption dated Jan. 26, 2006, ¶¶ 18-25 and exs., attached to Comments of N.J. Dep't of Env'tl. Protection and N.J. Meadowlands Comm'n, Jan. 27, 2006; Johnson Statement attached to Comments of Colorado Attorney Gen.'s Office, Jul. 13, 2006, ¶ 6; Comments of Illinois Env'tl. Protection Agency, Jul. 13, 2006, at 6-7, 8-10; Comments of Ohio Env'tl. Protection Agency, Jul. 13, 2006, at 3; Comments of State of Idaho Dep't of Env'tl. Quality, Jul. 12, 2006, at 1-2; Comments of Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper) and Hackensack Riverkeeper, Inc., Jul. 12, 2006, at 3-4, and attached Exs.; and Comments of Association of American Railroads, Jul. 13, 2006, at 5 n.7. And, once created, such problems are often very difficult to assess and remediate. For the above reasons and for the reasons stated in Massachusetts' prior filings with the Board, NET's proposal concerning the processing of solid waste therefore is not in the public interest.<sup>2</sup>

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<sup>2</sup> Massachusetts reasserts and incorporates herein its arguments submitted in its prior filings, which include Massachusetts' Reply to NET's Petition for Exemption, dated January 27, 2006; Verified Statement of James McQuade, dated January 26, 2006; Massachusetts' Comments on Whether the Board Has Jurisdiction over NET's Proposed Solid Waste Processing Facility, dated July 13, 2006; Verified Statements of David B. Ellis and James Doucett, both dated July 13, 2006; Massachusetts' Reply Comments on Whether the Board Has Jurisdiction over NET's Proposed Solid Waste Processing Facility, dated August 2, 2006; Statements of Position of MassDEP and MassAGO, both dated April 16, 2007.

Respectfully submitted by,

MASSACHUSETTS DEPARTMENT OF  
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By:



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Dated: August 29, 2007

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Dated: August 29, 2007

CERTIFICATE OF SERVICE

I, Siu Tip Lam, certify that on August 29, 2007, I served the foregoing Reply of the Commonwealth of Massachusetts to Petitioner's Submission of Supplemental Information Requested by the Board on all parties to this matter by causing a copy thereof to be delivered by regular mail, postage prepaid, to each of the individuals or entities listed below.

  
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